
TIMETABLING COMMITTEE

Determination no. 203

(following a hearing at Kings Cross on 29th January 2004)

[Note: the previous published determination is ttc191]

1. The Committee was asked by Thames Trains Ltd (TTL) to rule that Network Rail Infrastructure Ltd (Network Rail) should be directed to include, within the Summer 2004 Timetable, a path for a train equivalent to 1K29, 09:47 Bedwyn to Paddington. Furthermore, Thames Trains sought inclusion of the associated Empty Carriage Service, 5K29.
2. The Committee noted that the reference had been brought by TTL under the terms of Track Access Condition D5.1.1(d).
3. Network Rail stated that it justified its decision not to allocate a path to 1K29 in the 2004 Timetable, on the grounds that
 - 3.1. TTL did not have a right to such a service,
 - 3.2. the current service runs through the Reading area at a time of great congestion,
 - 3.3. the current service contributes to problems of working 7A09, one of the Mendip to Acton “jumbo” trains, which has Firm Rights.
4. The Committee found as matters of fact that
 - 4.1. The rights of TTL for services from Bedwyn/ Newbury to Paddington were made up of two elements
 - 4.1.1. so called “base” rights for the service groups 517 and 519, as set out in the 1996 Track Access Agreement; and
 - 4.1.2. so called “rollover” rights, which have been introduced into successive Timetables, and given force by successive Supplemental Track Access Agreements.
 - 4.2. Taken together, the “base” and “rollover” rights for the Bedwyn/ Newbury to Paddington service, provide for four categories of train, namely
 - 4.2.1. a regular pattern of 6 hourly off-peak services, timed to pass through Reading between 11:00 and 16:59;
 - 4.2.2. a number of other early morning, and evening services, expressed as services at set times with defined degrees of flex;
 - 4.2.3. a quantum right to one additional train between Bedwyn and Newbury (only) departing Bedwyn between 09:30 and 13:30; and

- 4.2.4. quantum rights to additional trains not the subject of any specific scheduled departure time: the “base” rights provide for 2 such paths. S Each timetable since Summer 1999 has catered for two further additional paths, subject to an appropriate Supplemental Track Access Agreement.
- 4.3. In past timetables, up to and including the current (Winter 2003) timetable, Network Rail (and its predecessor Railtrack) has agreed that the additional trains should include 1K29, the 09:47 Bedwyn to Paddington, and the appropriate access right has been incorporated into the relevant supplemental Track Access Agreement.
- 4.4. In its declaration for the 2004 timetable TTL has identified 1K29 as a train that it wishes to identify against one of the two “base” “additional rights”.
5. The current dispute arises because Network Rail has decided that operating 1K29, at the same times as in previous Timetables, creates an unacceptable performance risk to other trains. Network Rail has therefore decided further to reject TTL’s bid for 1K29, and to advise that it would not be prepared to agree any right to 1K29. The corollary of this action is that Network Rail
- 5.1. is asserting the right, irrespective of the terms of the declaration made by the Train Operator, to deem which of the additional services included in the offer fulfils the “base” “additional train” right, and which can only be fulfilled by the granting of further such rights in a supplemental Track Access Agreement. In consequence Network Rail
- 5.2. has advised TTL that it has neither any rights to 1K29, nor any “*expectations of rights*”, and that Network Rail is entitled therefore to reject the Bid.
6. The Committee was placed in some difficulty by the fact that all the information laid before it still left an area of doubt as to which of the current and proposed services actually corresponded to “base” rights, to “base additional rights”, to “rollover” rights, to “rollover additional rights” or to no rights at all. However, the Committee were able to establish, by dint of questioning, that the parties were agreed that,
- 6.1. the declaration made by TTL had asserted rights for the 2004 Timetable, in respect of a schedule broadly equivalent to the current (2003) Timetable and that that Timetable had reflected the pattern of rights as set out in 4.2 above; except that
- 6.2. there had been no declaration in explicit assertion of the right in respect of an additional Bedwyn to Newbury service (4.2.3 above);
- 6.3. fulfilment of all the quantum of services included in the TTL declaration was dependent upon the parties agreeing to an additional supplementary Track Access Agreement, without which there were no rights for two additional trains; therefore,

- 6.4. setting aside those two additional trains the offer made by Network Rail fulfilled the rights asserted.
7. The Committee noted that, had TTL limited its declaration to a quantum of rights that did not depend, for its fulfilment, upon the agreeing, by Network Rail, of supplemental rights, then the case would have fallen to be determined on the merits of the Network Rail offer as compared with the asserted Firm Rights and the Decision Criteria. In this case, TTL had sought additional rights, over and above those in the base contract. In these circumstances the Committee acknowledges that the decision as to which service is allocated to an unqualified quantum right, and which bid is left unfulfilled, can only be Network Rail's. Where new rights, even only quantum rights, are sought, it is beyond the competence of this Committee to determine whether or not such rights should be granted.
 8. The Committee determined that, given that the parties were agreed that the offer made was compliant with the rights that do exist, then, in circumstances where no substantive rights existed, and where Network Rail has declared that it is not prepared to concede even expectations of such rights, there can be no grounds for the Committee to direct Network Rail to include a path for 1K29 in the offer for the 2004 Timetable.
 9. In reaching this conclusion, in this specific case, the Committee was concerned to make clear that it was not making any form of qualitative judgement on the merits of Network Rail's decision not to perpetuate rights previously granted, nor on the grounds given for that decision.

Bryan Driver,

Independent Vice Chairman